IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 209 OF 2007

Shivaji D. Gunjal .. Petitioner

versus

M/s.Richardson & Cruddas (1972)
Ltd. & ors. .. Respondents

...

Mr.Shivaji D. Gunjal, petitioner in person.

Mr.S.Z. Chaudhary for respondent nos.1 and 2.

Ms.Ritu Singh for respondent no.4.

CORAM : R.M.S. KHANDEPARKAR
AND D.G.KARNIK, JJ

DATED : 30th April 2007.

P.C.:

1. Heard petitioner in person and advocates for the respondent.

2. The grievance of the petitioner is that in respect of the CBI charge-sheet being issued on the

basis of the facts which also constitute the ground for initiation of the departmental enquiry against the petitioner, and that the charges are to be framed in the criminal case against the petitioner, the request by the petitioner to postpone the departmental enquiry has been rejected and the enquiry is proceeded with even in the absence of the petitioner. Besides that the petitioner is not being allowed to be represented by the representative of his choice.

3. As regards the first ground of challenge, petitioner has not been able to point out as to what are the exact charges in criminal case nor any copy of the charge-sheet has been annexed to the petition. The specific query in that regard with the petition, he was unable to produce any material in that regard to satisfy us that the charges in the criminal proceedings are on the same set of facts which constitute the ground for departmental proceedings. Apart from that allegation about similarity in the charges, the petitioner has not been able to make out any case regarding the prejudice which the petitioner may suffer on account of departmental proceedings being continued during the pendency of the criminal

case against the petitioner.

4. Perusal of the representation made in that regard in the departmental proceedings also does not disclose the nature of the charges levelled against the petitioner in criminal proceedings nor the nature of prejudice, which he may, if any, suffer on account of the departmental proceedings. The representation merely disclosed apprehension on the part of the petitioner that the witnesses in both the proceedings as also the documentary evidence may be common in both the proceedings and the same will cause prejudice to the petitioner as he would be compelled to disclose his defence. Law on this point is well settled by catina of decisions last being in the matter of Ajitkumar Nag Vs. G.M. Indian Oil Corporation Ltd.& Ors. reported in 2005 AIR SCW 4986. It has been specifically ruled by the Apex Court that criminal proceedings by themselves do not constitute any prohibition for continuation of department proceedings as the object behind two proceedings are totally different. In criminal case, it is to inflict punishment on the offender whereas in departmental proceeding, one deals with the delinquent to impose the penalty for misconduct on

his part. Unless the petitioner is able to make out a case that disclosure of defence in departmental proceedings would prejudice his defence in the criminal proceedings with specific particulars in that regard, it cannot be said that the petitioner would be entitled to stall the departmental proceedings.

5. As regards the contention of the petitioner that departmental proceedings have proceeded even in the absence of the petitioner, undisputedly, the petitioner was fully aware of the dates of hearing of the departmental proceedings. It is true that his application for leave was sanctioned and the dates for hearing happened to be during the period during which leave was sanctioned to the petitioner. That itself could not entitle the petitioner to remain absent during the enquiry. Once the hearing of the enquiry was fixed and was communicated to the petitioner, it was necessary for the petitioner to ensure his presence during the hearing. Merely because the leave was granted by the management, that cannot be the justification for the petitioner to remain absent at the departmental proceedings.

6. As regards the representation by the person of his choice, admittedly, petitioner wanted the representative to be from the police department and service conditions applicable to the petitioner do not permit the petitioner to be represented by the police personnel during the department enquiry. Being so, rejection of the request in that regard cannot be held as illegal.

7. As no other ground is canvassed in the matter, we do not find any case for interference and hence, the petition is rejected.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)